



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 8, 1991

Ms. Georgia Flint
Acting Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR91-561

Dear Commissioner Flint:

Your predecessor asked whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13741.

You have received a request for information relating to the position of the State Board of Insurance or the Texas Insurance Commissioner on certain policy issues. Specifically, the requestor seeks 17 categories of information that you assert comprise all the records or documents in your possession which relate to guaranteed investment contracts. You advise us that some of the information will be made available to the requestor, specifically all funding contracts or guaranteed investment contracts "submitted to, received by, filed with, approved by, or disapproved by the Texas State Board of Insurance . . . from January 1, 1985 through the present." In addition, you intend to make available certain final orders of the Texas Insurance Commissioner, the State Board of Insurance, or any hearing officer. You claim, however, that the remaining information relates to pending litigation to which your agency might be a party and that the requested information is thus excepted from required public disclosure by section 3(a)(3). You also claim that some of the requested information is excepted from required public disclosure by the attorney-client privilege, as incorporated into the Open Records Act by

sections 3(a)(1) and 3(a)(7), and by sections 3(a)(11) and 3(a)(12).

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Open Records Decision No. 551 (1990) held that a section 3(a)(3) exception is applicable only when litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Parties to a lawsuit must obtain relevant information through the normal process of discovery. *Id.*

You advise us that an assistant attorney general representing your agency has intervened in the California state court proceeding styled *Garamendi v. Executive Life Insurance Co.* A motion to appear *pro hac vice* has been filed and granted. We conclude, therefore, that your litigation is pending. Having examined the documents submitted to us for review, we further conclude that the requested information relates to the pending litigation and that unless it has previously been disclosed through the discovery process or by court order, it may be withheld from required public disclosure under section 3(a)(3). Please note that this ruling applies only for the duration of the litigation and to the information at issue here. Because we resolve your request under section 3(a)(3), we need not address the applicability of sections 3(a)(1), 3(a)(7), 3(a)(11), and 3(a)(12) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR91-561.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/GK/lcd

Ref.: ID#s 13741, 13743, 13745, 13960

cc: Mr. Aaron M. Kaslow
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